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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

RAMBUS INC.,

Plaintiff,

vs.

HYNIX SEMICONDUCTOR INC., et al.,

Defendants.

CASE NO.: C 05-00334 RMW

**RAMBUS INC.'S NOTICE OF MOTION
AND MOTION *IN LIMINE* NO. 13 TO
EXCLUDE EVIDENCE OF OR RELIANCE
UPON THE INFINEON SETTLEMENT
AGREEMENT, AGREEMENTS
AFFECTED BY THE *INFINEON*
RULINGS, AND RELATED
NEGOTIATIONS**

[REDACTED PUBLIC VERSION]

Hearing date: December 19, 2008
Time: 2:00 pm
Courtroom: 6
Judge: Hon. Ronald M. Whyte
Trial Date: January 19, 2009

RAMBUS INC.,

Plaintiff,

CASE NO.: C 05-02298 RMW

1
2 vs.
3 SAMSUNG ELECTRONICS CO., LTD.,
4 et al.,

5 Defendants.

6 RAMBUS INC.,

7 Plaintiff,

8 vs.

9 MICRON TECHNOLOGY INC., et al.,

10 Defendants.

CASE NO.: C 06-00244 RMW

1 PLEASE TAKE NOTICE that on December 19, 2008 at 2:00 PM or as soon
2 thereafter as counsel may be heard, in the Courtroom of the Honorable Ronald M. Whyte in the
3 United States District Court for the Northern District of California, at 280 South First Street, San
4 Jose, California, Plaintiff and Counterclaim-Defendant Rambus Inc. ("Rambus") hereby moves
5 under Federal Rule of Evidence 403 to preclude Defendants and Counterclaimants Hynix
6 Semiconductor Inc., Hynix Semiconductor America Inc., and Hynix Semiconductor
7 Manufacturing America Inc., collectively "Hynix"; Defendants and Counterclaimants Micron
8 Technology, Inc. and Micron Semiconductor Products, Inc., collectively "Micron"; Defendants
9 and Counterclaimants Nanya Technology Corporation and Nanya Technology Corporation USA,
10 collectively "Nanya"; Defendants and Counterclaimants Samsung Electronics Co., Ltd., Samsung
11 Electronics America, Inc. and Samsung Austin Semiconductor, L.P., collectively "Samsung,"
12 from introducing evidence of, having their experts rely upon, or otherwise making any reference
13 to the 2001 Rambus-Samsung amended license agreement, the 2002 Rambus-Mitsubishi Interim
14 Agreement, the 2004 Rambus-Elpida Amended License Agreement, the 2005 Infineon Settlement
15 and License Agreement, the 2005 Samsung offers and counteroffers, or any negotiations
16 pertaining to any of these agreements (hereinafter "Tainted Agreements and Negotiations").

17 This Motion is based on this Notice of Motion and Motion; the Memorandum of
18 Points and Authorities attached hereto; the Declaration Of Andrea Jeffries In Support Of
19 Rambus's Motion *In Limine* No. 13 To Exclude Evidence Of Or Reliance Upon The Infineon
20 Settlement Agreement, Agreements Affected By The Infineon Rulings, And Related Negotiations
21 (filed concurrently with this motion); the Declaration of Bill Ward In Support of Rambus Inc.'s
22 Motion Under *Daubert* To Preclude The Manufacturers' Damages Experts From Relying On The
23 Infineon Settlement Agreement, Certain Amended License Agreements, And Certain License
24 Renegotiations (Oct. 24, 2008); and all of the Court's records and files in this action, and on such
25 other and further written and oral argument as may be presented at or before the hearing on this
26 matter.

1 DATED: December 3, 2008

MUNGER, TOLLES & OLSON LLP

2 SIDLEY AUSTIN LLP

3 McKOOL SMITH PC

4
5 By: /s/ Andrea Weiss Jeffries
6 Andrea Weiss Jeffries

7 Attorneys for Plaintiff RAMBUS INC.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Defendants should be precluded under Federal Rule of Evidence 403 from introducing evidence of Rambus's settlement agreement with Infineon and other agreements and negotiations that were affected by the *Infineon* rulings against Rambus. This Court has twice previously excluded this evidence from trial — in *Hynix I* and the January 2008 Conduct Trial — and should do so again here.

Because the rulings in *Infineon* against Rambus undermined the infringement, validity, and enforceability of the patents in suit, the Infineon settlement agreement and the renegotiations of Rambus's license agreements with Samsung, Mitsubishi, and Elpida in the wake of those rulings have little probative value, if any, as to what a reasonable royalty rate would have been, assuming Rambus's patents to be infringed, valid, and enforceable.

Moreover, any minimal relevance of the Tainted Agreements and Negotiations would be overwhelmed by the substantial prejudice to Rambus, confusion of issues, and consumption of time that would be required if the agreements or negotiations were allowed. Rambus would be forced to explain to the jury the history of the *Infineon* litigation and the adverse rulings that led to the renegotiations and Infineon settlement. For these reasons, the Court should exclude this evidence under Federal Rule of Evidence 403.¹

II. BACKGROUND

A. The Tainted Agreements and Negotiations Directly Resulted From The Infineon Rulings Against Rambus

Rambus entered into SDR/DDR license agreements in 2000 with at least six

¹ Rambus has filed a motion on different grounds, *Daubert* and Rule 702, to preclude the Defendants' damages experts from relying on these agreements and negotiations because their methods of reliance are inconsistent with the legal principle that the patents are known to be infringed, valid, and enforceable in the hypothetical negotiation. See Rambus Inc.'s *Daubert* Motion No. 3 To Preclude The Manufacturers' Damages Experts From Relying On The Infineon Settlement Agreement, Certain Amended License Agreements, And Certain License Renegotiations (Oct. 24, 2008) (hereinafter "*Daubert* motion No. 3").

1 DRAM manufacturers, including Samsung, Mitsubishi, and Elpida. [REDACTED]

2 [REDACTED]
3 [REDACTED] See Daubert Motion No. 3, at 2.

4 As detailed in Rambus's *Daubert* motion No. 3, a series of *Infineon* rulings
5 starting in 2001 severely undermined the perceived value of Rambus's patents. The first such
6 ruling was the *Infineon* district court's narrow construction of Rambus's patent claims in March
7 2001. See *id.* at 2-3. That ruling was quickly followed by the district court's finding in May
8 2001 that Infineon did not infringe Rambus's patents as a matter of law based on its narrow
9 construction. See *id.* Dealing a third blow, the *Infineon* jury found in that same month that
10 Rambus committed fraud in connection with its standard-setting activities at JEDEC. See *id.*

11 Samsung, Elpida, and Mitsubishi seized on these rulings in *Infineon* to redefine
12 their royalty obligations under the 2000 agreements. See *id.* at 3-5. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 Subsequent to the renegotiations with Samsung and Mitsubishi and during the
22 renegotiation period with Elpida, Rambus achieved some positive turns in its litigation —
23 namely the Federal Circuit *Infineon* appeal and the Administrative Law Judge's decision in the
24 FTC proceedings. See *id.* at 5-6. These developments, however, could not undo the damage that
25 the previous litigation events had done to Rambus's patent portfolio. [REDACTED]

Another adverse ruling in 2005 prompted settlement of the *Infineon* litigation. In March 2005, Judge Payne announced from the bench his intention to hold Rambus's patents unenforceable on the basis of unclean hands. *See id.* at 6. As described by Samsung's counsel in the September 2008 trial, "Infineon had [Rambus] over a barrel." and Judge Payne's announcement "forced [Rambus] to give a very good deal to Infineon" in order to avert further disaster that might follow if Judge Payne made spoliation findings. Ward Decl.³, Ex. S (Oct. 1, 2008 trial transcript), at 1079:3-11; *see Daubert* motion No. 3, at 6.

It was in this environment in early 2005 that Samsung and Rambus attempted to negotiate a new agreement to commence upon expiration of Samsung's 2000 license agreement in June of 2005. *See id.* at 7. In those negotiations, Samsung offered only a \$3.5 million quarterly payment. *See id.* As explained by Jay Shim, Samsung's Vice President and General Patent Counsel, Samsung offered that amount because of the "uncertainties regarding Rambus patents and litigations." Ward Decl., Ex. G (Sept. 24, 2008 trial testimony of Jay Shim), at 373:21-74:8; *see Daubert* motion No. 3, at 7. After the negotiations broke down, Rambus filed the present suit against Samsung.

B. The Defendants May Seek To Use The Tainted Agreements And Negotiations To Prove A Reasonable Royalty

Rambus anticipates that the Defendants will attempt to use evidence of the Tainted Agreements and Negotiations at the upcoming January 2009 trial to prove the amount of a reasonable royalty

³ As used herein, "Ward Decl." refers to the Declaration of Bill Ward In Support of Rambus Inc.'s Motion Under *Daubert* To Preclude The Manufacturers' Damages Experts From Relying On The Infineon Settlement Agreement, Certain Amended License Agreements, And Certain License Renegotiations (Oct. 24, 2008).

See *Daubert* motion No. 3, at 8-10.

III. ARGUMENT

The Infineon Settlement Agreement and other Tainted Agreements and Negotiations should be excluded under Federal Rule of Evidence 403. As discussed below, the unfair prejudice to Rambus, risk of confusion, and consumption of time from allowing that evidence would substantially outweigh any probative value the agreements might have. *See, e.g., Medtronic, Inc. v. Boston Scientific Corp.*, 2002 WL 34447587, at 26 (D. Minn. 2002) (finding “minimal probative value” of settlement negotiations “outweighed by the potential for needless distractions of the jury from the principal issues of the case at hand, which are legion” where settlement came from “complicated and unique circumstances” inconsistent with hypothetical negotiation).

A. Evidence Relating To The Tainted Agreements And Negotiations Would Be Unduly Prejudicial To Rambus, Confusing, and Highly Consumptive Of Time

Any reference to or evidence of the Infineon settlement agreement or its terms would require Rambus to explain the circumstances of the settlement to the jury. Exposing the jury to Infineon’s unclean hands claim and Judge Payne’s oral announcement regarding that claim — which is not an issue for the jury to decide — would necessarily cause Rambus tremendous prejudice. Moreover, presenting these issues to the jury may cause confusion among jurors as to the issues in that case and the present one. In addition, as this Court recognized when it excluded the Infineon settlement agreement in *Hynix I* under Rule 403, “both sides would have to spend an inordinate amount of time placing the Infineon litigation in context.” Order on Patent Trial Motions *In Limine*, Case No. C00-20905, Dkt. No. 1790 (Mar. 9, 2006), at 19. For all of these reasons, the Infineon settlement agreement and any reference to it should be excluded.

Likewise, if any of the renegotiated agreements with Samsung, Mitsubishi, and Elpida were admitted, Rambus would need to explain the history and impact of the rulings in the *Infineon* litigation in order to place the renegotiations in context. This would necessarily put Judge Payne’s claim construction and non-infringement rulings and the *Infineon* jury’s JEDEC-related fraud decision before this jury. As this Court found in *Hynix I*, “there is a severe risk that

the jury will be misled, confused, and that Rambus will be unfairly prejudiced if the Court admits evidence of Rambus's alleged JEDEC wrongdoing." *Id.* at 15. Therefore, the Court should exclude any evidence of agreements affected by the adverse *Infineon* rulings, as it did in the *Hynix I* patent trial. *See id.* at 19; Jeffries Decl.⁴ Ex. A (*Hynix* Patent Trial Tr.), at 949:3-949:22; 950:3-950:7; 952:15-952:22.

In opposition to Rambus's *Daubert* motion No. 3, the Defendants contended that "the degrees to which economic conditions and litigation affected" the Tainted Agreements and Negotiations should be decided by the jury. *Daubert* Opp. at 10.⁵ But this would engender the exact problems — prejudice, confusion, and undue consumption of time — that Rule 403 is designed to avoid. Therefore, the Defendants should not be permitted to present evidence of the Tainted Agreements and Negotiations to the jury.

B. The Tainted Agreements and Negotiations Are Not Probative Of A Reasonable Royalty

The prejudice, confusion, and undue consumption of time from allowing the Tainted Agreements and Negotiations would dwarf any probative value they might have. There is little, if any, conceivable relevance to the *Infineon* settlement agreement, particularly given the circumstances under which it was negotiated. When this Court excluded the agreement in the *Hynix I* patent trial under Rule 403, the Court correctly recognized the minimal relevance of the agreement because it was negotiated in light of Judge Payne's imminent unenforceability ruling:

Because the *Infineon* license came after Judge Payne dismissed Rambus's patent claims on the basis of unclean hands, it stands in stark contrast to the situation here, where Rambus has survived *Hynix*'s unclean hands challenge. This severely diminishes the relevance of the *Infineon* license.

Order on Patent Trial Motions *In Limine*, Case No. C00-20905, Dkt. No. 1790 (Mar. 9, 2006) at

⁴ As used herein, "Jeffries Decl." refers to the Declaration Of Andrea Jeffries In Support Of Rambus's Motion *In Limine* No. 13 To Exclude Evidence Of Or Reliance Upon The *Infineon* Settlement Agreement, Agreements Affected By The *Infineon* Rulings, And Related Negotiations (filed concurrently with this motion).

⁵ As used herein, "*Daubert* Opp." refers to Micron, Samsung, and *Hynix*'s Opposition To Rambus, Inc.'s *Daubert* Motion No. 3 To Preclude The Manufacturers' Damages Experts From Relying On The *Infineon* Settlement Agreement, Certain Amended License Agreements, And Certain License Renegotiations (Nov. 14, 2008).

19.

Similarly, the Court excluded the renegotiated Samsung and Elpida agreements in the *Hynix I* patent trial based on its “understanding [] that the renegotiation was affected, or caused by, the Infineon litigation,” an understanding that Hynix’s counsel confirmed. Ward Decl., Ex. T (March 22, 2006 trial transcript), at 952:15-21. During the 2008 Conduct Trial, this Court again excluded the renegotiated Samsung and Elpida agreements and the *Infineon* settlement, finding that they have no probative value of what a reasonable royalty would have been, assuming Rambus’s patents are valid, infringed, and enforceable:

[T]hese additional licenses have *little, if any, relevance* to what a *reasonable* and non-discriminatory *royalty rate would have been assuming Rambus’s patents are valid, infringed and enforceable*. The Infineon license was negotiated following a district judge’s announcement that he intended to dismiss Rambus’s patent claims on the basis of spoliation of evidence. The resulting royalty rate *has no probative value on what a reasonable* and non-discriminatory license *rate was for Rambus’s technology*. Similarly, the amended agreements with Elpida and Samsung were caused by the district judge’s now-reversed claim construction and the jury’s now-reversed fraud verdict in the *Infineon* litigation.

Order Regarding Two Pending Trial Motions, Case No. CV-00-20905-RMW, Docket No. 3318, at 5 (N.D. Cal. Feb. 26, 2008) (emphasis added). Although this Court has not previously ruled on the admissibility of the Mitsubishi renegotiated agreement, that renegotiation occurred under the same circumstances as the Samsung renegotiation. *See* Daubert Motion No. 3, at 4. Therefore, the Court’s reasoning as to the Samsung and Elpida amendments applies equally to the Mitsubishi renegotiated agreement.

This Court’s previous rulings are consistent with numerous other cases holding that agreements negotiated under circumstances inconsistent with the assumption of infringement, validity, and enforceability have little, if any, probative value of a reasonable royalty. *See, e.g., Studiengesellschaft Kohle, m.b.H. v. Dart Industries, Inc.*, 862 F.2d 1564, 1572 (Fed. Cir. 1988) (distinguishing “highly probative” value of a royalty after the patent was found valid and infringed, from cases discounting the probative value of a license that “was negotiated against a backdrop of continuing litigation and . . . infringement of the . . . patent”).

1 **C. None Of The Defendants' Attempts To Undermine The Court's Prior Rulings Is**
 2 **Persuasive**

3 In opposition to Rambus's *Daubert* motion No. 3, the Defendants asserted various
 4 theories of relevance for the Tainted Agreements and Negotiations, but none are persuasive.
 5 Hynix, Micron, and Samsung argued that the Tainted Agreements and Negotiations reflect, in
 6 part, economic conditions that existed at the time of the hypothetical negotiations. *See Daubert*
 7 *Opp.*, at 7-10. But this argument, even if it were true (which it is not, as explained below), does
 8 not make the Tainted Agreements and Negotiations probative of a reasonable royalty. It is the
 9 taint of results *adverse* to Rambus in litigation that renders the agreements of little probative
 10 value. *See Studiengesellschaft*, 862 F.2d at 1570-72.

11 Furthermore, the Defendants are wrong that the Tainted Agreements and
 12 Negotiations reflect economic conditions. There is no evidence that, in the absence of the adverse
 13 litigation rulings, the Tainted Agreements would have existed, or the terms of the agreements
 14 would have been what they were.

15 The 2005 Infineon settlement agreement clearly was driven by adverse events in
 16 the litigation – *i.e.*, events that are flatly inconsistent with the assumption of validity,
 17 infringement, and enforceability that underlie the hypothetical negotiation. As described by
 18 Samsung's counsel in the September 2008 trial, the terms of the settlement were dictated by
 19 Judge Payne's imminent harmful litigation ruling: "Infineon had [Rambus] over a barrel . . . they
 20 were trying desperately to avoid Judge Payne entering spoliation findings that would have had
 21 collateral estoppel effect everywhere else, and that's why they were forced to give a very good
 22 deal to Infineon." Ward Decl., Ex. S (Oct. 1, 2008 trial transcript), at 1079:4-11.

23 With respect to the 2001 Samsung amendment, Samsung's own statements
 24 establish that the amendment was the result of the rulings against Rambus in *Infineon*. [REDACTED]

25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED] Similarly, Mr. Shim recently testified before this Court that
 28 Samsung's renegotiation was driven by the uncertainties around Rambus's patents as a result of

1 the *Infineon* litigation. *See, e.g., id.*, Ex. G at 431:14-434:2 (Sept. 24, 2008 trial transcript) (Jay
 2 Shim testifying that in the late 2000-early 2001 time frame Samsung had strong concerns about “a
 3 patent enforceability issue . . . it was mostly about the facts coming out from the Infineon
 4 litigation and other litigations, fraud issues, and I think subsequently, I don’t know whether it was
 5 right at this time, the unclean hands issues. These go more to the fundamentals of whether or not
 6 we can do a license under that circumstances.”).

7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 The Mitsubishi renegotiation likewise occurred because of the *Infineon* rulings,
 21 and none of the Defendants have suggested otherwise. *See Daubert Opp.* at 9 (arguing that the
 22 economic conditions at the time of the Mitsubishi amendment “would have been close to the
 23 conditions” at the time of Micron’s hypothetical negotiation, but no argument that economic
 24 conditions precipitated the Mitsubishi amendment); Nanya’s *Daubert Opp.* (no mention of the
 25 Mitsubishi amendment).⁶ [REDACTED]

26 ⁶ As used herein, “Nanya’s *Daubert Opp.*” refers to Nanya Technology Corporation’s And Nanya
 27 Technology Corporation USA’s Opposition To Rambus Inc.’s *Daubert* Motion No. 3 To Preclude
 28 Dr. Robert E. Hall’s Opinions Based On The 2004 Elpida Agreement And The 2001 Samsung
 Agreement (Nov. 14, 2008).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Hynix's

counsel acknowledged to the Court in the 2006 *Hynix I* trial that the Elpida renegotiation "was affected, or caused by, the Infineon decision." Jeffries Decl., Ex. A (Hynix Patent Trial Tr.), at 952:15-952:22. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In its opposition to Rambus's *Daubert* motion No. 3, Nanya challenged the extent to which litigation impacted the Elpida amendment. Nanya's *Daubert* Opp., at 14-17. Nanya contended that "[t]he evidence Nanya will present at trial will show that Rambus believed in 2004 that its position was quite strong." *Id.* at 15. But Nanya offered *no* evidence to show that *Elpida* believed that Rambus's position was "quite strong" under the circumstances. *Id.* at 14-17. [REDACTED]

Nanya also suggested that "the various legal challenges against [Rambus] had been resolved in its favor by 2004" because the Federal Circuit's *Infineon* decision in 2003 held that Rambus was not liable for fraud and that its patent claims should not be narrowly construed, and

1 the ALJ found in 2004 that Rambus had not violated section 2 of the Sherman Act. *Id.* at 15.

2 But this argument ignores that the previous adverse litigation rulings had irreversible effects on
3 the market. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] “In determining the true measure of a
11 reasonable royalty, a court should not select a ‘diminished royalty’ rate a patentee may have been
12 forced to accept ‘by the disrepute of his patent and the open defiance of his rights.’” *Fromson v.*
13 *Western Litho Plate & Supply Co.*, 853 F.2d 1568, 1577 n.15 (Fed. Cir. 1988) (*Fromson I*)
14 (internal quotations and citation omitted), *overruled on other grounds*, *Knorr-Bremse Systeme*
15 *Fuer Nutzfahrzeuge GmbH v. Dana Corp.*, 383 F.3d 1337 (Fed. Cir. 2004). On remand from
16 *Fromson I*, the patentee, Fromson, moved to exclude “evidence of offers to license or licenses of
17 the Fromson patent” that the alleged infringer proffered as indicative of a reasonable royalty rate.
18 *Fromson v. Western Litho Plate and Supply Co.*, 1989 WL 149268, at 2 (E.D. Mo. 1989)
19 (*Fromson II*). The district court found that this evidence had “minimal probative value” and
20 reasoned that “[t]he probative value of these offers should be discounted because the offers
21 occurred in an atmosphere of widespread infringement.” *Id.* at 3. On appeal, the Federal Circuit
22 affirmed the district court’s refusal to consider this evidence, citing footnote 15 from its decision
23 in *Fromson I*. See *Fromson v. Citiplate, Inc.*, 886 F.2d 1300, 1303 (Fed. Cir. 1989) (*Fromson*
24 *III*).

25 Like the offers and licenses in *Fromson*, the Elpida renegotiations and amendment
26 have minimal probative value because Rambus’s patents were in a state of disrepute following the
27 numerous adverse rulings since 2001 and because a number of manufacturers had persisted in
28 openly defying its patent rights. [REDACTED]

1 [REDACTED]
2 [REDACTED] The
3 diminished royalty rate that Rambus was forced to accept under these conditions is not probative
4 of a reasonable royalty rate.

5 IV. CONCLUSION

6 For the foregoing reasons, Rambus respectfully requests that the Court preclude
7 the Defendants from introducing evidence of, having their experts rely upon, or otherwise making
8 any reference to the 2001 Rambus-Samsung amended license agreement, the 2002 Rambus-
9 Mitsubishi Interim Agreement, the 2004 Rambus-Elpida Amended License Agreement, the 2005
10 Infineon Settlement and License Agreement, the 2005 Samsung offers and counteroffers, or any
11 negotiations pertaining to any of these agreements.
12

13 DATED: December 3, 2008

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16
17 By: /s/ Andrea Weiss Jeffries
18 Andrea Weiss Jeffries

19 Attorneys for Plaintiff RAMBUS INC.
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